UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VERSUS

JYQUINCEE COLLINS

CRIMINAL ACTION

NO. 19-21-JWD-RLB

RULING AND ORDER

This matter comes before the Court on the *Motion to Suppress* (Doc. 15) filed by Defendant Jyquincee Collins ("Defendant"). The Government opposes the motion. (Doc. 17.) No reply was filed. Following the July 1, 2019, evidentiary hearing, the parties submitted the matter on the briefs. (Doc. 20.) Further argument is not necessary. The Court has carefully considered the law, the facts in the record, and the arguments and submissions of the parties and is prepared to rule. For the following reasons, Defendant's motion is granted.

I. Relevant Factual Background

The matter arises from a traffic stop. Defendant was the driver of the vehicle, and he had borrowed it from his girlfriend. According to the video submitted into evidence, he was traveling down a road at a fair rate of speed when he made a right turn. He continued traveling, made another right turn, and eventually pulled into a driveway. Officer Benjamin Zeringue testified, and the Government argued, that the bases for the traffic stop were that Defendant failed to use his turn signal and drove off the road. (*See Opposition*, Doc. 17 at 1.) Zeringue claimed that, after the stop, he smelled marijuana in the vehicle. He then searched it, found a pistol, and arrested Defendant.

Defendant was indicted with one count of possession of a firearm by a convicted felon. (Doc. 18.) Defendant filed the instant motion to suppress challenging the traffic stop and search.

II. Discussion

A. Parties' Arguments

Defendant contends that the Government has the burden of proving the validity of the stop and search. In briefing, Defendant cites Zeringue's allegation that Defendant turned "improperly." At the hearing, Defense counsel focused his questioning on whether the officer actually knew that Zeringue turned improperly and ran off the road and whether Zeringue could, after the stop, actually smell marijuana coming from Defendant's car from his position five feet away.

The Government responds that the traffic stop was justified at its inception because Defendant violated a Louisiana statute and city ordinance requiring drivers to activate their turn signal at least one hundred feet before turning. Additionally, according to the Government, the search was valid because Zeringue smelled marijuana emanating from the vehicle.

B. Applicable Law

1. General Principles

The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." *United States v. Hunt*, 253 F.3d 227, 230 (5th Cir. 2001) (quoting U.S. Const. amend. IV). "The essential purpose of the Fourth Amendment is to impose a standard of 'reasonableness' upon law enforcement agents and other government officials in order to prevent arbitrary invasions of the privacy and security of citizens." *Id.* (citing *Delaware v. Prouse*, 440 U.S. 648, 653–654, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)). Accordingly, "the Supreme Court has determined that warrantless searches and seizures are per se unreasonable unless they fall within a few narrowly defined exceptions." *United States v. Cardenas*, 9 F.3d 1139, 1147 (5th Cir. 1993) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)).

"While in general, on a motion to suppress, the defendant has the burden of proving, by a preponderance of the evidence, that the material in question was seized in violation of his constitutional rights, there are several situations where the burden shifts to the government." *United States v. Roch*, 5 F.3d 894, 897 (5th Cir. 1993). The Fifth Circuit has stated that one situation in which the burden shifts to the Government is when a defendant shows that he was subject to search without a warrant. *Id.* Consequently, where Defendant has established standing and the facts are undisputed that he was subject to a warrantless search, the Government bears the burden of proving the legality of the stop and the warrantless search by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 178 n.14, 94 S. Ct. 988, 996, 39 L. Ed. 2d 242 (1974).

2. Standing

"In order to claim the Fourth Amendment's protection, a defendant must have 'a legitimate expectation of privacy in the invaded place.' " *United States v. Iraheta*, 764 F.3d 455, 461 (5th Cir. 2014) (quoting *United States v. Hernandez*, 647 F.3d 216, 219 (5th Cir. 2011)). " 'The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.' " *Id.* (quoting *Rakas v. Illinois*, 439 U.S. 128, 130 n.1, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)). "A defendant's 'expectation must be "personal[ ]" and "reasonable," and it must have a "source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." ' " *Id.* (quoting *Hernandez*, 647 F.3d at 219 (alteration in original) (quoting *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998))). "In other words, a defendant's standing 'depends on 1) whether the defendant is able to establish an actual, subjective expectation of privacy with respect to the place being searched or items being

seized, and 2) whether that expectation of privacy is one which society would recognize as [objectively] reasonable.' " *Id.* (quoting *United States v. Kye Soo Lee*, 898 F.2d 1034, 1037–38 (5th Cir. 1990)). " 'Standing does not require an ownership interest in the invaded area. . . .' " *Id.* (quoting *Hernandez*, 647 F.3d at 219).

The Fifth Circuit has "recognized that 'passengers who assert[ ] neither a property nor a possessory interest in the automobile that was searched, nor any interest in the seized property, ha[ve] no legitimate expectation of privacy entitling them to the protection of the [F]ourth [A]mendment.' " *Iraheta*, 764 F.3d at 461 (quoting *United States v. Greer*, 939 F.2d 1076, 1093 (5th Cir. 1991) ("Wood and Jordan have no standing to object to the search of the car or its passengers. They were only passengers in the truck, and they never claimed a possessory or ownership interest in the vehicle or its contents.")).

However, passengers have standing under certain circumstances. For example, the Supreme Court has recognized that "[a] passenger . . . has standing to challenge a stop's constitutionality." *Arizona v. Johnson*, 555 U.S. 323, 332, 129 S. Ct. 781, 787, 172 L. Ed. 2d 694 (2009) (citing *Brendlin v. California*, 551 U.S. 249, 256–59, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007)). Further, the Fifth Circuit has held that a passenger of a vehicle, using the car with the owner's permission, has standing as a lawful possessor of the car to challenge a search of the vehicle. *See United States v. Martinez*, 808 F.2d 1050, 1056 (5th Cir. 1987) (citations omitted). The Fifth Circuit later characterized *Martinez*'s holding as: "where a person has borrowed an automobile from another, with the other's consent, the borrower becomes a lawful possessor of the vehicle and thus has standing to challenge its search." *Kye Soo Lee*, 898 F.2d at 1038 (finding that defendants had standing because they were "operating the truck with [the owner's] permission" and because the owner had given the defendants "the keys to the truck and entrusted the vehicle

and its contents to" them).

3. *Terry* Stops

The Fifth Circuit analyzes the constitutionality of traffic stops under the standard articulated in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). *United States v. Berry*, 664 F. App'x. 413, 418 (5th Cir. 2016) (per curiam). *Terry* articulated a two-part test, which asks: (1) whether the officer's action was "justified at its inception," and (2) whether the officer's subsequent actions were "reasonably related in scope to the circumstances that justified the stop in the first place." *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005) (quoting *Terry*, 392 U.S. at 19-20).

As to the first prong, "[f]or a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle." *United States v. Henry*, 853 F.3d 754, 756–57 (5th Cir. 2017) (quoting *United States v. Andres*, 703 F.3d 828, 832 (5th Cir. 2013)). "To pass muster, [the officer's] suspicion must have been based on specific and articulable facts and not mere hunches." *United States v. Martinez*, 808 F.2d 1050, 1054 (5th Cir. 1987) (citing *United States v. Cortez*, 449 U.S. 411, 417–18, 101 S. Ct. 690, 694–95, 66 L. Ed. 2d 621 (1981); *Terry*, 392 U.S. at 21, 88 S. Ct. at 1879). Additionally, the Court "must gauge those facts not individually, but in their totality and as seen and interpreted by officers of [the effectuating officer's] experience." *Id.* (citations omitted).

C. Analysis

Having carefully considered the law, the facts in record, and the arguments of the parties, the Court will grant Defendant's motion. Preliminarily, assuming that the Government could raise the issue of standing by a single statement in a footnote (which is questionable) (*see* Doc. 17 at 2

n.1), the Court finds that Defendant has met his burden on this issue. Zeringue's testified that Defendant borrowed the car from his girlfriend (or, at the very least, that inference could be drawn from Zeringue's testimony). Thus, Defendant has standing to challenge the validity of the stop. *See Brendlin*, 551 U.S. at 256–59; *Kye Soo Lee*, 898 F.2d at 1038.

Thus, the Government had the burden of proving by a preponderance of the evidence that Zeringue had an objectively reasonable suspicion to believe that a traffic violation occurred. The Government has failed to meet that burden.

Again, the Government claims two bases for the traffic stop: (1) an illegal right turn, made without a turn signal, and (2) Defendant's running off the road. But the Government's video is inconclusive on both points. Almost immediately after the video begins, Defendant makes a right-hand turn, but the video is too dark to see whether Defendant is or is not using his turn signal properly. Further, Zeringue claims that Defendant later ran off the road when making his second right turn, but the camera is too far from Defendant's vehicle to tell whether this occurred. Thus, the Government's video is insufficient evidence to support the stop.

Without the video, the validity of the stop turns completely on Zeringue's credibility. However, the Court observed and listened to Zeringue's testimony and found he lacked credibility (both generally and on this point specifically). The Court has serious doubts that Zeringue was able to see from his vehicle the Defendant veer off the road an inch or so, particularly in light of his speed and his distance from Defendant's car. Further, the Court found other parts of Zeringue's testimony questionable, such as his statements about smelling the marijuana from Defendant's vehicle and his distance from that car after the stop. All of this undermines Zeringue's statements about Defendant making an improper right turn. Indeed, the Court believes that this alleged improper turn never occurred.

In sum, the Court finds that the Government has not proven, more likely than not, that Zeringue had objectively reasonable suspicion to initiate the traffic stop. Consequently, the Court will suppress all evidence which followed from the stop as fruit of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

III. Conclusion

Accordingly,

IT IS ORDERED that the *Motion to Suppress* (Doc. 15) filed by Defendant Jyquincee Collins is **GRANTED**, and all fruits of the unlawful *Terry* stop and automobile search are hereby **SUPPRESSED;** and

IT IS FURTHER ORDERED that the parties are hereby given thirty (30) days in which to file an appeal or any motions necessitated by this ruling.

Signed in Baton Rouge, Louisiana, on July 19, 2019.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA